

Escrow Commission Meeting Minutes

January 9, 2007

Attendees:

Commissioners: Robert Golden (Chair), Stan Pilon, Laurie LeMay, Susan Kinyon

Consumer Services Division Representation: Whittier Johnson, Program Manager; James Brusselback, Program Manager; JoePaul Wong, Financial Examiner; Beth Craig, Administrative Assistant; Joe Vincent, General Counsel

Additional Guests: Jonelle Wheeler (ACS NW, Inc), Barbara Fox (Limited Practice Board), Kim George (Pacific Maritime Title), Callie VanNess (Pacific Maritime Title), Milly Holden (Pacific Maritime Title), Kelly Valenta (Pacific Maritime Title), Tanya Lage (Pacific Maritime Title), Irene Yamamoto (United Bank of California), Sharon Holman (SMS).

Approve Minutes from October 18, 2006, Meeting

Laurie LeMay moved to approve the minutes from the October 18, 2006, Escrow Commission meeting. Susan Kinyon seconded, all were in favor and the minutes were approved.

Thank You to Outgoing Commissioner

Whittier Johnson presented Sharon Holman with a certificate of appreciation from the Department of Financial Institutions for serving on the Escrow Commission. Robert Golden thanked Sharon on behalf of the Escrow Commission.

Reopen the Escrow Commissioner Position

Robert Golden asked that people within the escrow industry apply for the commissioner opening. Please print and send the application to DFI. DFI will post the position again to the website.

Vessel Escrow Interpretation Letter

Joseph Vincent attended the last Escrow Commission meeting and presented an interpretive letter on behalf of the Division of Consumer Services regarding vessel escrow. Vessel escrow is subject to escrow licensing under law by definition of "escrow" in the Escrow Agents Registration Act. Joe's opinion was also based upon definition by people associated within the vessel escrow industry and complaints sent to the Securities Division. Ultimately Joe's opinion was to implement licensing for vessel escrow companies.

This caused some controversy within the vessel industry. Joe concluded that DFIs interpretation was premature. DFI is working to reduce and avoid interpretation that should be done in the rulemaking process. This interpretation will be looked into deeper and decided in the rulemaking process and include the industry. This opinion seems to single out one type of industry and should consider other escrow type industries.

There are four ways a statutory ambiguity can be dealt with, according to Joe:

- Take the issue back to the Legislature to look at Section 14 again and change the definition of escrow.
- Go to the Legislature and open the exemption section again. This could cause unrest in the industry.
- Submit the whole concept (what constitutes escrow) through the rulemaking process to clarify the definition of escrow and include the industry by public meetings.
- Create an interpretive letter.

DFI takes responsibility for creating the interpretive letter prematurely and recalling it. The issue will be looked into further by consulting the Commission. The opinion letter needed to be recalled before January 1, 2007, and the matter is still open to consideration.

Jerry Baker stated that the reason this issues was brought up originally was to get a yes or no answer from the Department. He feels no voice of the consumer is in this. He will abide by what DFI says but feels that the vessel escrow industry should have some sort of oversight and regulation.

Joe Vincent said that consumer protection was taken into consideration and a consumer protection representative was consulted.

Philip Dryden feels DFI did well on removing the letter and is happy it will go through the rules process.

Robert Golden feels DFI narrowed in on vessel escrow and feels there is a bigger hidden escrow industry out there to explore.

Molly Holden (Pacific Maritime Title) feels this came suddenly and wanted more notice. She feels that the history of the industry should be reviewed to see if a consumer was harmed. She welcomes regulation but maybe not under the Escrow Agent Registration Act. She feels they should look into the business and see what they do everyday.

Joe Vincent encouraged Molly to speak with him about their business practices.

Stan Pilon stated that we need to know who all the stakeholders are in the maritime escrow industry so information can be passed to them.

Robert Golden asked if there is a Department of Licensing license required to be a vessel escrow company.

Molly Holden said no.

Robert Golden asked Molly if they license the vessels. Therefore, is Department of Licensing a stakeholder?

Joe Vincent stated that if Department of Licensing is a stakeholder then so is the Coastguard. He feels all major parties need to come to the table and talk about this issue. Joe would like to be walked through the whole process of a vessel transaction.

Reporting From the Office of the Insurance Commissioner Regarding Title Companies

Stan Pilon wanted to hear from the Commission and the audience regarding the Office of the Insurance Commissioner (OIC) findings and investigation of title companies. Stan has deep concerns about the report and what OIC plans to do about the issue. According to the report there was an 18-month investigation and among the findings it was found that title companies were giving out “freebies” and kickbacks in large sums. There was a news article published in the Seattle Times about the findings. It was stated, in the Seattle Times, that the Commissioner was not going to take action on these findings because of the money it would cost to litigate the issue.

Stan feels that escrow companies cannot compete with title companies when they give out large sums of money in “freebies” to maintain/obtain business. Stan also feels that the public perception of the OIC not enforcing the law should be of concern. Stan encourages escrow companies to contact the OIC about their concerns as escrow companies.

Philip Dryden thought that a panel was formed regarding this issue.

Jonelle Wheeler feels the OIC made a mistake by not dealing with this for consumer’s sake.

Old Business

Stan Pilon addressed the reconveyance fees again. Kwadwo said that a staff attorney is working on a letter addressing this. It will show examples of the reconveyance fees. If you charge the fee, you must do the reconveyance. If not, you will refund the fee. If you track the reconveyance process, you must show evidence that you earned the fee.

New Business

Robert Golden addressed the idea of having the first DEO listed as inactive.

Sharon mentioned that this was addressed during the tiered licensing discussions. You cannot obtain a license and have it put on “hold” it must have a person assigned to it.

Phil Dryden said that anyone could be a DEO as long as they have taken the test and completed the applications.

Whittier Johnson said that they used the same parallel as the escrow officer licensing when creating the new mortgage loan originator licensing. Have people available who have taken the test in your company so a new DEO can be appointed when needed.

Kwadwo Boateng stated that there were no investigations to report on from the last Commission meeting.

Laurie LeMay said that she gave Jim Brusselback a letter talking about a HUD refund she received. She said that Jim was going to use the letter as a tip in DFIs complaint database but had not heard anything else from Jim. Kwadwo said he would follow up with Jim on this issue.

Philip Dryden asked if there was an update on lawyers doing escrow transactions in their practice.

Kwadwo said that DFI is still looking into this issue.

Robert Golden asked if the Bar Association was involved in this issue.

Joe Vincent said that the Bar Association is involved but that they may not be as effective as DFI could be in this issue.

Philip said that he's concerned that consumers don't understand that they are working with an attorney and not an escrow company. This could be considered false advertising.

Philip asked DFI for an update on personnel actions.

Kwadwo explained that Consumer Services is losing Kate Dixon and Lana Monfort back to the Securities Division in March. They are in the process of training Joe Wong and Robert Tam about the escrow examination program and DFI is currently recruiting for escrow examiners.

Stan Pilon mentioned that Chuck Cross has left DFI and moved to CSBS. Stan expressed his appreciation for all Chuck did for the escrow program.

Whittier Johnson gave an update on the mortgage broker loan originator program. There are over 8,000 pending license applications (at the time of the meeting) waiting to be processed. The escrow agent renewals went on as normal with help from the Securities Division.

Laurie LeMay mentioned that the Escrow Association of Washington has their annual meeting on September 14th in Everett and would like participation from DFI again this year.

Meeting adjourned at 11:15 a.m.

The next quarterly Escrow Commission Meeting will occur on April 10th, at 9:00 a.m. at Highline Community College.